advertising amounted to a fraud on the public, equity would not interfere where plaintiff's hands were unclean. In both this case and the principal one the rule that the misrepresentation must be directly connected with the subject matter of the suit (*Shaver* v. *Heller,* 108 Fed. 821, 834), was considered inapplicable. In *Coca Cola Co.* v. *Koke Co.* (U. S S. Ct., October term, 1920), 41 Sup. Ct. 113, the court sustained an injunction against an infringement of the name "Coca Cola," in spite of the objection that the name was a deceit on the public. In reversing the conclusion in 255 Fed. 894, and modifying and affirming the holding in 235 Fed. 408, the court decided that there was no fraudulent advertising in the case, and that although the name was derived from a derivative of cocaine, and now, as a matter of fact, the drink contained no cocaine, yet the public asked for the beverage itself, and not for a drink with the expectation of getting cocaine in it. From a consideration of these cases it would seem that the Illinois court in its broad application of the rule was justified in principle, although none of the cases considered has stated or applied it so liberally.

EVIDENCE—TESTIMONY OF THE DECEASED GIVEN AFTER THE TIME OF THE ACCIDENT IS ADMISSIBLE AS PART OF RES GESTAE.—Statements made by the deceased after being shot that the defendant had attacked and robbed him, though made some time after the accident, *held* admissible as part of the *res gestae,* since there had been no opportunity to deliberate on the effect of the words. *Solice* v. *State* (Ariz., 1920), 193 Pac. 19.

The doctrine of *res gestae,* as a basis for the admission of evidence, may be summarized, in a limited sense, as the practice of admitting the entire collection of primary facts constituting the immediate and necessary field of judicial inquiry in the particular case. This may involve the admission of declarations and statements that might otherwise be classed as hearsay evidence, even though these statements may not have occurred at the time or at the place of the principal occurrence. A further inquiry into the exact nature of the doctrine of *res gestae* reveals the fact that it has been applied as a loose name covering several more definite rules for admitting evidence, the more important of which are spontaneous exclamations or statements, statements admissible under the verbal act doctrine, statements showing mental condition, and statements admissible as part of the issue under the pleadings, and others. This confusion of several distinct bases for the admission of evidence has in many cases led to confusion of the elements necessary for the admission of evidence of the type involved in the principal case, and more technically known as spontaneous exclamations. Spontaneous exclamations, as an exception to the hearsay rule, are admissible when, because of the element of the time of making such exclamations and the circumstances of making, it is evident that the words have been emitted spontaneously and without previous reflection on their effect. Untrustworthiness being the basis of the hearsay rule, it is the spontaneity of this particular form of *res gestae* that insures their truth and forms the basis of the exception. Hence the elements necessary for the presence of this guaranty

seem to be a startling occasion, a statement made before there is time for fabrication, the content of which relates to the circumstances of the occurrence. A number of courts in treating matters coming distinctly under the head of spontaneous utterances of this kind have confused the requirements with those of other forms of *res gestae,* and particularly with those of verbal acts. The elements of a verbal act are either that the words must be a part of the issue under the substantive law involved or must be such as to give a certain legal significance to the principal occurrence, and such statements have generally been held only to be admissible if those of the actor and if precisely contemporaneous in time with the principal act. Courts, then, in confusing these two classes of evidence have called statements made after the time of the accident and not in exclamatory form "narrative," and exclude such statements on the basis that they are not a part of, contemporaneous with, or having a particular bearing on the principal act, without considering that the real necessity is that such statements must merely be made under such circumstances as to guarantee their truthfulness. In *Carroll* v. *Knickerbocker Ice Co.,* 218 N. Y. 935, the court considers that the mere fact that the statement was in narrative form sufficient reason for excluding it. Other such cases are: *Vicksburg M. R. Co.* v. *O'Brien,* 119 U. S. 99; *Dompier* v. *Lewis,* 131 Mich. 144; *Clark* v. *Electrical Supply Co.,* 72 Mo. App. 506; *Ruschenberg* v. *So. Elec. R. Co.,* 161 Mo. 70, 61 S. W. 626. In *Butler* v. *M. Ry. Co.,* 143 N. Y. 417, 38 N. E. 454, the court does not seem to consider spontaneous utterance as a basis for the admission of evidence, but stated that statements were admissible only when unfolding the character or quality of the principal act. *Williams* v. *So. Pac. Co.,* 133 Cal. 550, goes so far as to intimate that narration in any form, even though given during the time of the principal occurrences in question, may be excluded. It is evident that if so strict a rule were consistently followed most spontaneous utterances would be entirely excluded. This case also follows another element of the verbal act doctrine in its intimation that only principal actors' statements are so admissible, while the spontaneous exclamations of chance witnesses have generally been admitted if the other necessary guaranties of trustworthiness are present. Other cases following the principal case in admitting statements of this kind when the necessary elements of trustworthiness are present are: *Louis* v. *Ill. Cen. R. Co.,* 140 La. 1; *Freemen* v. *Ins. Co.,* 195 S. W. 545; *Daly* v. *Pryor,* 197 Mo. App. 583, 198 S. W. 91. For a full collection of cases of this type, see 42 L. R. A. (N. S.) 918.

INSURANCE—DEATH WHILE IN MILITARY SERVICE.—A life insurance policy provided, "If, within five years from the date of this policy, the insured shall engage in military or naval service in time of war, the liability of the company, in event of the death of the insured while so engaged * * * shall be limited to the return of the regular premium * * *" After the issuance of the policy the insured was inducted into military service under the provisions of the Selective Service Law, and died of pneumonia in a hospital at Camp Taylor, Kentucky. In an action by his administrator to recover the